

### REMARKS

This is a full and timely response to the Office Action mailed December 24, 2009. Upon entry of this response, pending claims 48-60 are herein canceled without prejudice and new claims 61-71 are submitted for examination.

Applicants respectfully request that there be consideration of all new claims.

### SPECIFICATION

The disclosure was objected to because "it contains an embedded hyperlink and/or other form of browser executable code" at paragraph 87. Furthermore, on page 15 of the specification as filed, the placement of figure 1 covers the text.

Accordingly, Applicants herein submit an amended specification (marked-up and clean versions) and replacement drawing sheets containing required formality corrections.

1. Applicants note that the removal of the figures that had been inadvertently embedded in the copy of the international application specification at pages 11, 12, 13, and 15 as filed **May 17, 2006**, and in the substitute specification at pages 11, 12, 13, and 15 as filed **May 17, 2006**, now exposes underlying text.

Applicants assert that the revealed text, indicated in the marked up version (as submitted herein) at page 11, line 33 to page 12, line 11, was fully presented in the PCT application serial no. PCT/US04/38506 filed November 17, 2004. Accordingly, the now revealed text does not constitute new matter.

2. Applicants further state that the figures and their accompanying legends that had been inadvertently embedded in the specification as filed and incorrectly labeled as Figs. 1, 2, 1, and 1 are now submitted herein as Figs. 18-21, and the legends that previously had been embedded in the copy of the international application specification at pages 11, 12, 13, and 15 as filed **May 17, 2006**, and in the substitute specification at pages 11, 12, 13, and 15 as filed **May 17, 2006**, have now been inserted at page 4 under the "Brief Description of the Drawings" in the substitute specification submitted herein for entry.

Applicants assert that the Figs. 18-21 and the text of the legends to Figs. 18-21, as presented herein were fully presented in the copy of the international application specification as

filed **May 17, 2006**, and in the substitute specification as filed **May 17, 2006**. Accordingly, the substitute specification as submitted herein does not constitute new matter.

## **CLAIMS**

### **Rejection under 35 USC §112, first paragraph**

Claims 48-60 were rejected under 35 USC §112, first paragraph as allegedly failing to comply with the written description requirement

Applicants herein cancel claims 48-60 of the present application, and submit for entry the new claims 61-71. Applicants submit that the new claims are fully disclosed in the specification as filed and do not introduce new matter, and are submitted herein merely to clarify the claimed subject matter.

Even though the rejection is rendered moot with respect to the now canceled pending claims 48-60, in anticipation that the Examiner may reject the new claims on the same grounds as in the office action mailed June 19, 2009, Applicants herein traverse the rejection to claims 48-60, but with reference to the new claims 61-71.

New claims 61-71 are drawn to a yeast cell comprising a heterologous nucleotide encoding a heterologous polypeptide, the heterologous polypeptide having an enzymic activity characterized as generating a candidate nuclear receptor ligand from a substrate, and a yeast transcription modulating system comprising a recombinant nuclear receptor polypeptide that, in the presence of the nuclear receptor ligand binding to the recombinant nuclear receptor polypeptide, activates expression of a genetic locus, and an adapter polypeptide, wherein the recombinant nuclear receptor polypeptide and the adapter polypeptide are each independently encoded by individual heterologous polynucleotides or are encoded by the same heterologous polynucleotide. The yeast cell of the present application may further comprise a plurality of heterologous nucleotides, each encoding a heterologous polypeptide having an enzymic activity and which may cooperate to produce a nuclear receptor binding ligand.

Applicants assert that the subject matter of the new claims herein submitted are supported in the substitute specification as filed **May 17, 2006**, and in particular, but not limited to, pages 12 to 16 thereof. The yeast cell-based systems are further supported by being schematically shown in Figs. 19 and 21 submitted herein.

The Examiner, with regard to claim 52 (which is herein canceled) states that "while an enzyme can convert a substrate to a product, it is unclear how a polypeptide produces a substance." New claims 61-71 submitted herein now define a heterologous polypeptide as having an enzymic activity, thereby avoiding the asserted indefiniteness of claim 52.

### **CONCLUSION**

In light of the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D J Hayzer", written in a cursive style.

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